



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 5934-99

21 March 2000

ATZ [REDACTED] HSNFR  
[REDACTED]

[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 15 March 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command dated 20 January and 4 February 2000, copies of which are attached. They also considered the memorandum from the Deputy Assistant Secretary of the Navy (Personnel Programs) dated 18 October 1999, approving your general court-martial authority's denial dated 22 July 1999 of your complaint under Article 138, Uniform Code of Military Justice.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion dated 20 January 2000. They found that all actions required for withdrawal of your recommendation for advancement were properly and timely effected by your temporary additional duty commanding officer. They were unable to find that this withdrawal was in reprisal for your not having been reduced in rate by your special court-martial. Since they found no error or injustice in the withdrawal of your recommendation for advancement, they had no grounds to effect your advancement to pay grade E-6 effective 16 December 1998. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and

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material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosures



**DEPARTMENT OF THE NAVY**  
**NAVY PERSONNEL COMMAND**  
**5720 INTEGRITY DRIVE**  
**MILLINGTON TN 38055-0000**

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1610  
PERS-311  
20 JAN 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: AT [REDACTED] USN [REDACTED]

Ref: (a) Special Courts-Martial Findings of 5 FEB 99  
(b) BUPERSINST 1610.10, EVAL Manual  
(c) ALNAV 080/96, DUI/DWI Policy  
(d) Article 138, UCMJ

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests removal of his performance report for the period 16 June 1998 to 15 November 1998.

2. Based on our review of the material provided, we find the following:

a. A review of the member's digitized record revealed the report in question to be on file. The member signed the report indicating his desire to submit a statement. The member's statement, along with the command's endorsement is on file.

b. The member feels the reporting senior's comments "Blood Alcohol Level: .216", are inappropriate due to a Special Courts-Martial findings of "Not Guilty".

c. Reference (a), concluded that the member was "Guilty" of an article 111 specification for drunken operation of a vehicle on 5 September 1998, and "Not Guilty" of having a BAC of .216. Per OJAG code 20, the news mailer 96-26-23 DEC 96, BAC evidence serves to create an irrefutable presumption of drunkenness. However, a member is never charged nor convicted of a particular BAC level. Rather, the charge, regardless of how it is proven, remains "drunk driving".

d. Reference (b), Annex N, paragraph N-13.a, states "Comments may be included on misconduct whenever the facts are clearly established to the reporting senior's satisfaction". The

Subj: AT2 [REDACTED] USN, [REDACTED]

Commanding Officer, Patrol Squadron Four, [REDACTED] states in his endorsement to the member's statement "A breathalyzer was conducted on 5 September 1998, after [REDACTED] failed all three phases of the field coordination test. The test indicated a BAC of .216. Based on the information presented to me, the breathalyzer was properly functioning, accurate, and the test was properly conducted". Based on the Commanding Officer's comments, the facts were clearly established. We feel the reporting senior's comments are appropriate.

e. The marks, comments and recommendations contained in the report are the responsibility of the reporting senior. Per reference (c), paragraph 1, substantiated alcohol abuse is to be documented in the member's service record by specifically addressing it in the member's evaluation.

f. Reference (d) further determined that the member's allegations are without merit.

g. The member does not prove the report to be unjust or in error.

4. We recommend the report remains as written.

5. We recommend the member's petition be forwarded to Director, Active Officer Promotions, Appointments, and Enlisted Advancements (PERS-85) for comments concerning the member's request to be promoted to E-6, due to improper removal of his promotion recommendation [REDACTED]ment.

[REDACTED]

Head/ Performance  
Evaluation Branch



**DEPARTMENT OF THE NAVY**  
**NAVY PERSONNEL COMMAND**  
**5720 INTEGRITY DRIVE**  
**MILLINGTON TN 38055-0000**

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1430  
Ser 85/157  
04 FEB 00

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL  
RECORDS (BCNR)

Via: Assistant for BCNR Matters (PERS-00XCB)

Subj: COMMENTS AND RECOMMENDATIONS IN THE CASE OF  
[REDACTED], [REDACTED]

Ref: (a) BUPERSINST 1430.16D  
(b) Memorandum, 1610 PERS-311 of 20 Jan 00

Encl: (1) BCNR file #05934-99

1. Based on policy and guidelines established in reference (a), enclosure (1) is returned recommending disapproval.

2. Removal of recommendation for advancement is accomplished by submission of an Enlisted Evaluation Report. Petty Officer [REDACTED]'s evaluation of 15 November 1998, has a promotion recommendation of significant problems, which removes the member's recommendation for advancement. Based on reference (b), which recommends the report remain as written, Petty Officer [REDACTED]'s recommendation for advancement was properly withdrawn by his Commanding Officer. No relief is recommended in this case.

[REDACTED]  
By direction